

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
BEAUFORT DIVISION

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Mark Lewis,) C. A. No. 2:10-0861-HFF-RSC
)
Plaintiff,)
)
-versus-) **REPORT AND RECOMMENDATION**
)
Beaufort County, Beaufort)
County Sheriff's Office and)
J. Hoyt, Faith Linguard,)
South Carolina Department of)
Motor Vehicles and Latonia)
Washington,)
)
Defendants.)

The plaintiff brought this action, through his attorney Charles Edward Houston, Jr. of the Houston Law Firm, on March 5, 2010, in the circuit court for the South Carolina Fourteenth Judicial Circuit. Since the complaint sought, among other things, relief pursuant to 42 U.S.C. § 1983, the defendant Beaufort County removed the action to this court on April 7, 2010. Also on April 7, 2010, the defendant Beaufort County filed a motion to dismiss. On April 9, 2010, the defendants Beaufort County Sheriff's Department, J. Hoyt, and South Carolina Department of Motor Vehicles filed motions to dismiss. There is nothing in the record indicating that defendants Linguard and Washington have ever been served with the complaint.

The plaintiff has not responded to the motions and it appears to the court that the plaintiff no longer wishes to prosecute this action.

Furthermore Rule 4(m) of the Federal Rules of Civil Procedure provides that unless a defendant is served within 120 days after the complaint is filed, the court must dismiss the action without prejudice. Since this action was filed on March 5, 2010, the plaintiff has less than a month, that is early July 2010, to perfect service on defendants Linguard and Washington. Given the plaintiff's failure to defend against the outstanding motions, it appears unlikely that he will perfect service in a timely manner on Linguard and Washington.

Therefore, it is recommended that this action be dismissed with prejudice for failure to prosecute as to Beaufort County, Beaufort County Sheriff's Department, J. Hoyt And the South Carolina Department of Motor Vehicles. Davis v. Williams, 588 F.2d 69, 70 (4th Cir. 1978), 41(b) Federal Rules of Civil Procedure.

Further unless the plaintiff produces evidence of timely service of the complaint on Defendants Linguard and Washington,

it is recommended that this action be dismissed without prejudice
as to defendants Linguard and Washington.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "Robert S. Carr". The signature is written in a cursive, somewhat stylized font.

Robert S. Carr
United States Magistrate Judge

Charleston, South Carolina

June 10, 2010